

Case 1:14-cv-06108-LAP Document 7 Filed 12/02/14 Page 13 of 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rogelio Agusvivas - Done

RECEIVED
SDNY PRO SE OFFICE USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 2/20/15

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Andrej Bajuk in his official and individual capacity
The Assigned Counsel Plan / 18B Panel
Michael Morris in his official and individual capacity
The Drug Enforcement Administration
The New York Drug Enforcement Task Force

**AMENDED
COMPLAINT**

under the Civil Rights Act,
42 U.S.C. § 1983

Jury Trial: Yes No
(check one)

14 Civ. 6108 (LAP)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff's Name Rogelio Agusvivas - Done
 ID# 349 130 2258
 Current Institution A.M.K.C.
 Address 18-18 Hazen Street
E. Elmhurst, NY 11370

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name Andrej Bajuk Shield # _____
 Where Currently Employed _____
 Address 225 Broadway, Suite #1100
New York, NY 10007

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Defendant No. 2

Name The Assigned Counsel Plan / 18B Panel
Shield #

Where Currently Employed _____

Address 253 Broadway
New York, NY 10007

Defendant No. 3

Name Michael Morris
Shield #Where Currently Employed Drug Enforcement AdministrationAddress 99 Tenth Avenue
New York, NY 10011**Who did what?**

Defendant No. 4

Name Drug Enforcement Administration
Shield #

Where Currently Employed _____

Address 99 Tenth Avenue
New York, NY 10011

Defendant No. 5

Name The New York Drug Enforcement Task Force
Shield #

Where Currently Employed _____

Address Pending - unknown at this time.**II. Statement of Claim:**

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?

Not Applicable

B. Where in the institution did the events giving rise to your claim(s) occur?

Not Applicable

C. What date and approximate time did the events giving rise to your claim(s) occur?

May 13, 2013

D. Facts:

SEE Attached Statement
of facts and claims**What happened to you?**

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Was
anyone
else
involved?

Who else
saw what
happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

*deprivation/loss of property, specifically my vehicle Audi 2006,
(SEE EXHIBIT 'A', Title and ID of Vehicle)*

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes No _____

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If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

G.R.V.C. + A.M.K.C.

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes No _____ Do Not Know _____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes _____ No Do Not Know _____

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes _____ No

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes _____ No

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

Not Applicable

1. Which claim(s) in this complaint did you grieve?

2. What was the result, if any?

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

This issue does not involve events within the jail setting nor are defendants employed at any Correctional Facilities

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2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:

N/A

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I submitted a complaint to the
Assigned Counsel Plan and the Departmental
Disciplinary Committee (SEE EXHIBIT 'E')

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). I am seeking to have

the declaration of the forfeiture set aside, have my
property returned or replaced in its physical form
or received the money equal to the value of the
Vehicle (approximately \$12,000.00 SEE EXHIBIT 'C' detailing
Asset Value), I am seeking \$100,000.00 as
compensatory money damages for the deprivation of property,
violation of my federally protected rights and for the
mental pain + suffering + emotional distress sustained as a
result of this harm and I am seeking \$20,000.00
in punitive damages for the reckless and callous indifference
by the defendants to my federally ~~prote~~ protected rights

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VI. Previous lawsuits:**On these claims**

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes No _____

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff Andrej Bajuk Rogelio Agusivivas-Done
 Defendants Andrej Bajuk and the City of New York

2. Court (if federal court, name the district; if state court, name the county) Pending -
Notice of Claim was filed with Comptroller's office

3. Docket or Index number Pending - waiting for claim number

4. Name of Judge assigned to your case Pending

5. Approximate date of filing lawsuit 7-2-15

6. Is the case still pending? Yes No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) Pending

On other claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes _____ No

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____
 Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

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6. Is the case still pending? Yes _____ No _____
If NO, give the approximate date of disposition _____
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?)

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 13 day of February, 2015.

Signature of Plaintiff

Inmate Number

Institution Address

X 
349-130-2258
A. M. K. C.
18-18 Hazen Street
E. Elmhurst, NY 11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 13 day of February, 2015 I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:



Statement of Claim

At all relevant times herein, defendants were "persons" and acted "under color of state law" to deprive the plaintiff of his Fourth, Fifth, Sixth, Eighth Amendment U.S. Constitutional Rights, as set more fully below.

Statement of Facts

The plaintiff, Rogelio Aguasvivas-Done, as a pre-trial detainee, is submitting this claim, seeking relief for the violations, of his Federal rights protected under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of U.S. Constitution by the defendants. Manner in which claim arose is as follows:

On February 4th, 2013, an application for a search warrant composed by defendant Special Agent Michael Morris from the Drug Enforcement Administration (who are defendants in this action as well), was approved by the Special Narcotics Court of New York County. (SEE Exhibit 'B', the Search Warrant)

According to defendant, Michael Morris, one of the targeted addresses, 1244 ~~1244~~ Virginia Avenue, was suspected as being a location where activity involving narcotic distribution was taking place.

The address is a legitimate furniture business titled, "C+R Upholstery". This is the same address listed in the Title of the

vehicle that belongs to the plaintiff (SEE Exhibit 'A', Title of Vehicle).

The exact time of when the search was conducted is unknown to the plaintiff, however, the search of 1244 Virginia Avenue, produced absolutely no evidence related to narcotics distribution. As of today, even after the search, ~~remains~~ 'C + R Upholstery' remains an open/operable business.

Although no evidence surfaced from the search of address listed on plaintiff's Title & Registration, defendants Michael Morris, The Drug Enforcement Administration and the New York Drug Enforcement Task Force, arrested the plaintiff on 2-5-2013.

Plaintiff was charged, indicted and arraigned in Manhattan Supreme Court, Part 45, for Conspiracy in the 1st Degree in violation of Penal Law 105.15, (Crimes) Possession of a Controlled Substance in the 1st Degree in Violation of Penal Law 220.21(1) and Criminal Possession of a Controlled Substance in the 3rd Degree in violation of Penal Law 220.16(1).

On 2-5-2013, defendant, the Assigned Counsel Plan / 18B Panel, appointed defendant, Andrej Bajuk, to represent the Plaintiff in aforesaid criminal matter which is still pending disposition under indictment number 580/2013.

As the plaintiff neither reads, speaks or writes in the English language, an interpreter from the Assigned Counsel Plan/18-B Panel was provided to assist Mr. Bajuk and plaintiff with communications relevant to his criminal case.

During the pendency of the criminal case, defendant The Drug Enforcement Administration, mailed a "Notice Of Seizure" to the Plaintiff and his court-appointed attorney, defendant Mr. Bajuk. (SEE Exhibit 'C', Notice of Seizure).

Upon receiving the Notice of Seizure, Plaintiff went to the law library at G.R.V.C. to ask the civilian legal coordinator what the contents of the 'notice' was referring to. The legal coordinator instructed plaintiff to provide the Notice of Seizure to his attorney.

Plaintiff mailed a copy of the Notice of Seizure to defendant Mr. Bajuk.

A subsequent phone call to defendant Mr. Bajuk, it was revealed to the "Plaintiff" through an interpreter, that the attorney had received the "Notice of Seizure" pertaining to his vehicle and that Mr. Bajuk will "take care" of this matter for him. At no given time was plaintiff aware nor made aware by Mr. Bajuk that forfeiture proceedings

were underway and that there was a specific deadline to contest such forfeiture. The omission of this information by defendant Mr. Bajuk left Plaintiff with inadequate notice of the seizure within sufficient time to file a timely claim.

Plaintiff maintains that defendant Mr. Bajuk was not a freely selected attorney. Mr. Bajuk was court-appointed by defendant the Assigned Counsel Plan/18-B Panel.

Upon interpreter disclosing to plaintiff that Mr. Bajuk was handling matters relevant to his property, Plaintiff took the position that as a loyal advocate for his matters, Mr. Bajuk, would take all the necessary steps to protect plaintiff from any foreseeable harm or deprivation of property.

On June 13th 2013, plaintiff's request for re-assignment of Counsel was granted. Mr. Bajuk was relieved as court-appointed counsel. Prior to this date, Plaintiff, through phone calls, Counsel visits and court appearances, requested and update on the status of criminal case and the issue with his vehicle. Mr. Bajuk through an interpreter assured plaintiff that "he was taking care of everything". Plaintiff requested for a re-assignment of counsel after he noticed that his matters were not

properly being represented and that very little progress was being made in his criminal case.

After defendant Mr. Bajuk was replaced by new counsel, Plaintiff with the assistance of the civilian legal coordinators at the G.R.V.C. Law Library wrote a letter to the defendant, the Drug Enforcement Administration, to get an update on the status of his vehicle. He also had a letter sent to Mr. Bajuk requesting all his legal documents relevant to his criminal case and the Notice of Seizure.

On September 3rd 2013, defendant the Drug Enforcement Administration, replied to plaintiff's request. (See Exhibit 'D'). The response clearly states,

"The DEA sent written notice of the seizure to your residence, your place of incarceration and your attorney

"After the period identified in these letters expired without response, the DEA forfeited the currency on July 3, 2013"

"the time for seeking relief from forfeiture...had expired several months before the DEA received your request"

The U.S. Constitution prohibits the

deprivation of life, liberty and property, without due process of law, requires that the Assistance of Counsel^{to} be effective, prohibits cruel and unusual punishment and provides for the equal protection of the laws.

The Fourth Amendment states people have a right to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, and no Warrants shall be issued but upon probable cause.

Plaintiff asserts that his Constitutional Rights were violated by defendant Michael Morris and the Drug Enforcement Administration and the New York Drug Enforcement Task Force in the unreasonable seizure of his property.

Although a warrant was approved to search ~~1244~~ 1244 Virginia Avenue, the items or evidence that were being looked for by the defendants did not surface. Absolutely no evidence that indicates "drug-trafficking" was produced from the search of 1244 Virginia Avenue. Plaintiff maintains if no evidence was found at the targeted address, then the seizure of his property (the vehicle) constitutes an "unreasonable seizure" and cruel and unusual punishment. Moreover, if government officials suspected 'CTR Upholstery' to be a location

of narcotic distribution, why after a failed search would they seize plaintiff's property and permit the business to continue to operate?

Plaintiff also claims had it not been for the ineffective assistance of counsel, appointed by the Assigned Counsel Plan/18-B Panel, provided by Andrej Bajuk, the loss of his property could have been prevented.

It is without question that defendant Andrej ~~Bajuk~~ Bajuk's representation fell below an objective standard of reasonableness.

Mr. Bajuk received Notice of the Seizure from the Plaintiff and defendants the D.E.A. Mr. Bajuk was well aware of the fact that plaintiff did not understand the english language and made plaintiff aware through an interpreter that he would be "taking care of everything".

The failure to file a timely claim is what caused the deprivation of property. Had it not been for this error by Mr. Bajuk, plaintiff's vehicle would have not been forfeited.

Plaintiff states that he should not be bound by the ^{incompetent} acts and intentional, willful and knowing neglect of an attorney who was not freely selected.

Plaintiff states that Mr. Bajuk's malfeasance and blatant omissions are direct causes of the loss of his property and violate his Fifth, Sixth, Eighth and Fourteenth Amendment U.S. Constitutional Rights.

Plaintiff states that by appointing an attorney who was reckless and callously indifferent to his ~~federal~~, federally protected rights, the Assigned Counsel Plan/18B Panel are liable for the loss and harm he suffered.

Plaintiff states that the Assigned Counsel Plan/18 Panel were grossly negligent in not adequately supervising, screening, training or managing an individual subordinate (Mr. Bajuk) who violated his federal rights.

Both Assigned Counsel Plan/18-B Panel and Mr. Bajuk's negligence combined not only violated Plaintiff's Constitutional Rights but had it not been for this attorney's malpractice, plaintiff would have succeeded in contesting the seizure/forfeiture and regaining his vehicle.

THE PLAINTIFF

EXHIBIT

A

NEW YORK STATE

www.dmv.ny.gov



Title and Identification No.		Year	Make	Model Code	Body/Hull	Document No.
WAUEH74F56N090048 WAUEH74F56N090048		2006	AUDI	AA6	4DSD	382194N
Color	Wt/Sts/Lgth.	Fuel	Cyl./Prop.	New or Used	Type of Title	Date Issued
GY	3843	GAS	6	USED	VEHICLE	9/24/12

Name and Address of Owner(s)

AGUASVIVAS - DONE, R
 1244 VIRGINIA AVE
 BRONX NY 10472

ODOMETER READING: 118674
 ACTUAL MILEAGE 118674

This document is your proof of ownership for this vehicle, boat or manufactured home. Keep it in a safe place, not with your license or registration or in your vehicle or boat. To dispose of your vehicle, boat or manufactured home, complete the transfer section on the back and give this title to the new owner.

Lienholder _____

Lienholder _____

* NO LIENS RECORDED *

* NO LIENS RECORDED *

Lienholder _____

Lienholder _____

* NO LIENS RECORDED *

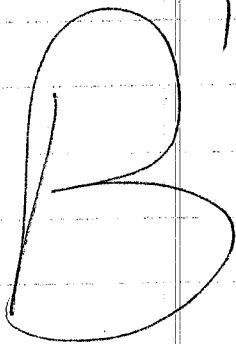
* NO LIENS RECORDED *

MV-999 (1/1)

DEPARTMENT OF MOTOR VEHICLES

EXHIBIT A

EXHIBIT



SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL NARCOTICS COURTS
COUNTY AND CITY OF NEW YORK

In the Matter
of

an application for a warrant
authorizing a search of 2059 St.
Raymonds Avenue, Apartment 2F,
Bronx, New York ("TARGET PREMISES
1").

In the Matter
of

an application for a warrant
authorizing a search of C&R
UPHOLSTERY located at 1244 Virginia
Avenue, Bronx, New York ("TARGET
PREMISES 2").

In the Matter
of

an application for a warrant
authorizing a search of 2910
Wallace Avenue, Apartment E7,
Bronx, New York ("TARGET PREMISES
3").

In the Matter
of

an application for a warrant
authorizing a search of 2300
Olinville Avenue, Apartment 5A,
Bronx, New York ("TARGET PREMISES
4").

0214-2013

SEARCH WARRANT NO.
SPECIAL NARCOTICS COURT

AFFIDAVIT IN SUPPORT
OF AN APPLICATION FOR
A SEARCH WARRANT

0215-2013

SEARCH WARRANT NO.
SPECIAL NARCOTICS COURT

AFFIDAVIT IN SUPPORT
OF AN APPLICATION FOR
A SEARCH WARRANT

0216-2013

SEARCH WARRANT NO.
SPECIAL NARCOTICS COURT
AFFIDAVIT IN SUPPORT
OF AN APPLICATION FOR
A SEARCH WARRANT

0217-2013

AFFIDAVIT IN SUPPORT
OF AN APPLICATION FOR
A SEARCH WARRANT

SEARCH WARRANT NO.
SPECIAL NARCOTICS COURT

It is requested that the officers executing the search warrants be permitted to enter the above premises at any time of day or night. I believe that it may be necessary to execute the search warrants at nighttime - i.e. between the hours of 9:00 p.m. and 6:00 a.m. - for the safety of the law enforcement officers involved in the execution of the warrant and the greater likelihood of the recovery of heroin and the arrest of parties culpable in the trafficking of heroin and other narcotics.

It is also requested that the officers executing the warrant be permitted to enter the above premises without giving prior notice of authority and purpose, as the property sought may be easily and quickly destroyed or disposed of, and because giving notice may endanger the lives and safety of the executing officers and others. The reasons for my belief are as follows: the type and amount of drugs sought; to wit, large quantities of heroin and other narcotics; the targets of the search warrant are reasonably likely to be present at the time of the execution of search warrant; my experience with or knowledge of the destruction of drugs during narcotics-related arrests and the execution of narcotics search warrants, to wit, during many prior executions, individuals inside the target locations have thrown narcotics out of windows or attempted to flush them down the toilet; there are areas inside the target premises that the targets and others can

use for destruction or disposal of the illegal drugs, to wit, access to multiple windows, access to a toilet; access to the target premises is restricted, in that there are multiple locks on the front door of the target apartment; the location is being used for drug distribution on an ongoing basis, and it is therefore reasonably likely that the targets have taken precautions to destroy the illegal drugs; the dangers inherent in the drug trade; my experience with or knowledge of the recovery of weapons in narcotics-related arrests and the execution of narcotics search warrants.

It is also requested for evidentiary purposes that this Court grant authorization for law enforcement personnel to videotape and photograph the interior of the target premises; and to process the target premises for fingerprints; and to analyze, test, and in any way scientifically process the target premises and all items seized.

With respect to the stored electronic communications, data, information and images contained in computer disks, CD ROMs and hard drives, described above, it is also requested that this Court grant permission to retrieve the above-described communications, data, information, and images, and print them or otherwise reproduce them by converting them or copying them into storage in another device.

Further, it is requested that this affidavit be sealed,

said sealing to be disturbed only by Order of the Court.

No previous application in this matter has been made in this or in any other court to any other judge or justice.



Special Agent Michael Morris
Drug Enforcement Administration

Sworn to before this
4 day of February, 2013

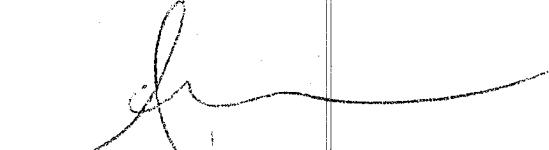
TIME: 10¹⁵ pm



Justice Bruce Allen
Supreme Court, New York County
Special Narcotics Court

PT. 45 FEB 04 2013

APPROVED:



Amy Sharpe
Assistant District Attorney
(212) 815-0103

EXHIBIT B
1)



U.S. Department of Justice

Drug Enforcement Administration

Rogelio Aquavivas Done, Prisoner ID No. 3491302258
 aka Done Rogelio Aguasvivas, Rogelio Aguasvivas-Done
 and Rogelio Aguasviva-Done
 George R. Vierno Center
 09-09 Hazen Street
 East Elmhurst, NY 11370

Asset Id:	13-DEA-578300
Case Number:	CT-12-0045
Property:	2006 Audi A6
Vehicle ID Number:	WAUEH74F56N090048
Asset Value:	\$11,675.00
Seizure Date:	02/08/2013
Seizure Place:	Bronx, NY
Owner Name:	Cespedes, Alfida E.
Seized From:	Don...,Rogelio Aquavivas Done AKA Rogelio Aguasviva-Done AKA
Judicial District:	Southern District of New York

NOTICE MAILING DATE: April 8, 2013

NOTICE OF SEIZURE

The above-described property was seized by the Drug Enforcement Administration (DEA) for forfeiture pursuant to **Title 21, United States Code (U.S.C.), Section 881**, because the property was used or acquired as a result of a violation of the Controlled Substances Act (Title 21, U.S.C., Sections 801 et seq.). The seizure date and place, as well as other pertinent information regarding the property are listed above.

TO REQUEST REMISSION

If you want to request the remission (**pardon**) or mitigation of the forfeiture, you must file a petition for remission or mitigation with the Forfeiture Counsel of the DEA within thirty (30) days of your receipt of this notice. The petition must include proof of your

Pursuant to Title 18, U.S.C., Section 983 and Title 19, U.S.C., Sections 1602-1619, procedures to administratively forfeit this property are underway. You may petition the DEA for return of the property or your interest in the property (remission or mitigation), and/or you may contest the seizure and forfeiture of the property in Federal court. **You should review the following procedures very carefully.**

OR MITIGATION OF FORFEITURE

interest in the property and state the facts and circumstances which you believe justify remission or mitigation. The regulations governing the petition process are set forth in Title 28, Code of Federal Regulations, Part 9.

TO CONTEST THE FORFEITURE

In addition to, or in lieu of petitioning for remission or mitigation, you may contest the forfeiture of the seized property in UNITED STATES DISTRICT COURT. To do so, you must file a claim with the Forfeiture Counsel of the DEA by **May 13, 2013**. The claim need not be made in any particular form (Title 18, U.S.C., Section 983(a)(2)(D)). The claim shall identify the specific property being claimed; state the claimant's interest in such property; and be made under oath, subject to penalty of perjury (Title 18, U.S.C., Section 983(a)(2)(C)). A frivolous claim may subject the claimant to a civil fine in an amount equal to ten (10) percent of the value of the forfeited property, but in no event will the fine be less than \$250 or greater than \$5,000 (Title 18, U.S.C., Section 983(h)). Upon the filing of a claim under Title 18, U.S.C., Section 983(a), a claimant may request, pursuant to Section 983(f), release of the seized property during the pendency of the forfeiture proceeding due to

hardship. Requests must be sent to the Forfeiture Counsel of the DEA. The following property is not eligible for hardship release: contraband, currency, or other monetary instruments or electronic funds unless the property constitutes the assets of a legitimate business which has been seized; property to be used as evidence of a violation of the law; property, by reason of design or other characteristic, particularly suited for use in illegal activities; and property likely to be used to commit additional criminal acts if returned to the claimant. If you wish to contest the forfeiture of the asset, you must comply with the procedures set forth herein. Your failure to do so will result in the termination of your interest in the asset, and may preclude your contesting the forfeiture of the asset in any judicial proceeding - either civil or criminal - even if such a proceeding has already been commenced or is commenced in the future.

WHERE TO FILE CORRESPONDENCE

All submissions must be filed with the Forfeiture Counsel, Asset Forfeiture Section, Drug Enforcement Administration, HQs Forfeiture Response, P.O. Box 1475, Quantico, Virginia 22134-1475. Correspondence sent via private delivery must be filed with the Forfeiture Counsel, Asset Forfeiture Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152. A PETITION, CLAIM, OR OTHER CORRESPONDENCE SHALL BE DEEMED FILED WITH THE FORFEITURE COUNSEL, ASSET FORFEITURE SECTION, WHEN RECEIVED BY THE DEA AT EITHER OF THE ADDRESSES NOTED ABOVE. SUBMISSIONS BY FACSIMILE OR OTHER ELECTRONIC MEANS WILL NOT BE ACCEPTED. The Asset ID referenced above should be used with all submissions. Failure to include the Asset ID may cause a delay in processing your submission(s).

EXHIBIT

Y



www.dea.gov

SEP 03 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rogelio Aquavivas Done
ID No. 349130 2258
George R. Vierno Center
09-09 Hazen Street
East Elmhurst, New York 11370

RE: DEA Case No. CT-12-0045
Asset ID No. 13-DEA-578300
2006 Audi A6

Dear Mr. Done:

I am writing in response to your request for the return of the above-referenced property. Following your arrest for heroin trafficking, the Drug Enforcement Administration (DEA) seized the Audi for the purpose of Federal forfeiture pursuant to 21 U.S.C. § 881(a)(4). Thereafter, the DEA sent written notice of the seizure to your residence, your place of incarceration and your attorney. See 18 U.S.C. § 983(a)(1). After the period identified in these notice letters expired without response, the DEA forfeited the currency on July 3, 2013. Consequently, the time for seeking judicial relief from the forfeiture in Federal court or administrative relief from the forfeiture through the remission process had expired several months before the DEA received your request. See 18 U.S.C. § 983(a); 28 C.F.R. § 9.3(a). Accordingly, your request is denied.

Sincerely,


Larry D'Orazio
Senior Attorney

~~EXHIBIT~~

~~(~~ ~~)~~

Rogelio Aguasvivas-Done
(349-130-2258)

18-18 Hazen Street
E. Elmhurst, NY 11370

January 30, 2015

To: The Departmental Disciplinary Committee
First Department
61 Broadway
NY, NY 10006

RE: Complaint against Andrej Bajuk

Dear Sir or Madam,

At this time, I, Rogelio Aguasvivas-Done, would like to submit this complaint regarding the incompetent and purposefully damaging representation from my former Court Appointed Counsel, Mr. Andrej Bajuk.

Mr. Bajuk was assigned to represent in what continues to be a pending criminal case in New York Supreme Court in New York County. The case is under indictment # 580-2013 in which I have been charged with Conspiracy in the 2nd Degree (P.L. 105.15) and Criminal Possession of a Controlled Substance in the First Degree (P.L. 220.21).

At the core of this complaint is that Mr. Bajuk failed to protect me from

a foreseeable harm, the loss and deprivation of property, my 2006 Audi A6 vehicle. (SEE EXHIBIT A).

On February 4th, 2013, an application for Search Warrant # 0215-2013, was approved by Judge Bruce Allen, authorizing members of the Special Narcotics Team, The D.E.A. and the New York Drug Enforcement Task Force to search the address, 1244 Virginia Ave, Bronx, NY 10472 for any proceeds, contraband or evidence connected to narcotics distribution. (SEE EXHIBIT 'B' the warrant). Please be advised, that this is the same address the Title of my vehicle is registered under.

Although no evidence was found at the targeted address, I was subsequently arrested and my car was seized.

I was not aware of the seizure of my vehicle until I spoke to Mr. Bajuk's interpreter who assured me they were aware of the seizure and would do everything they could to make sure I did not lose my property.

Exhibit C is a Notice of Seizure sent to myself and Mr. Bajuk. Because I could not speak nor read the English language I was not aware that

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There was a required deadline for me to file a claim for my seized car. Upon receiving the Notice of Seizure I gave it to Mr. Bajuk who stated that would take care of the situation.

On June 13th 2013, after I noticed that Mr. Bajuk was not diligently nor effectively representing my pending matters in New York Supreme Court, I requested to have him re-assigned and that all documents pertaining to my circumstance be given to me.

On the grounds that Mr. Bajuk's providing of documents was delayed, I wrote a letter to the DEA requesting an update on the status of my car.

According the D.E.A.'s response, no claim was ever filed, my car was forfeited and the time to contest the forfeiture had expired. (SEE EXHIBIT 'D').

Ove to Andrej Bajuk's willful neglect, incompetence and failure to zealously defend and represent my matter I have been deprived of my property and as a result lost ownership of my vehicle.

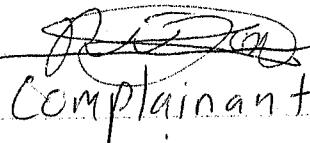
Mr. Bajuk did, ^{not} only fall below the minimum standard of a reasonably competent attorney, he also is in violation of several rules of professional conduct and a violator of my

Constitutional Rights.
As a result of Mr. Bajuk's damaging representation, I am seeking to obtain relief from various courts for malpractice and constitutional violation claims.

Please accept this legal document as a complaint against Mr. Bajuk in hopes that he will be held accountable for failing to protect me from a foreseeable harm and contributing to the loss of my property.

Thank you.

Respectfully,


Complainant

1/31/15


Notary Public

MKECHI IGBO
NOTARY PUBLIC-STATE OF NEW YORK
No. 011G6163948
Qualified in Queens County
My Commission Expires April 01, 2016

GRIEVANCE COMMITTEE FOR THE
2ND & 11TH JUDICIAL DISTRICTS
DIANA MAXFIELD KEARSE, CHIEF COUNSEL
RENAISSANCE PLAZA - SUITE 2400
335 ADAMS STREET
BROOKLYN, NEW YORK 11201-3745
(718) 923-6300

This office investigates allegations of misconduct of attorneys with offices in BROOKLYN, QUEENS and STATEN ISLAND ONLY.

If the attorney in question has his office in MANHATTAN or the BRONX, please send this form to:

THOMAS J. CAHILL, ESQ., CHIEF COUNSEL
DEPARTMENTAL DISCIPLINARY COMMITTEE
FIRST JUDICIAL DEPARTMENT
61 BROADWAY - 2ND FLOOR
NEW YORK, NEW YORK 10006
(212) 401-0800

If the attorney in question has his office in either WESTCHESTER, NASSAU or SUFFOLK COUNTY, please send this form to:

SUFFOLK & NASSAU
RITA ADLER, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
10TH JUDICIAL DEPARTMENT
150 MOTOR PARKWAY - SUITE 102
HAUPPAUGE, NEW YORK 11788
(631) 231-3775

WESTCHESTER COUNTY
GARY L. CASELLA, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
9TH JUDICIAL DISTRICT
399 KNOLLWOOD ROAD - SUITE 300
WHITE PLAINS, NEW YORK 10603
(914) 949-4540

COMPLAINANT:

YOUR NAME:	(MR.) <input checked="" type="checkbox"/> (MS.) <input type="checkbox"/>	Dore Aguswivis	(LAST)	(FIRST)	(INITIAL)
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ADDRESS:	18-18 Hazen Street		(STREET)		
	E. Elmhurst	N.Y.		11370	(ZIP CODE)
(CITY)	(COUNTY)	(STATE)			

TELEPHONE NUMBER (HOME)	(OFFICE)
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ATTORNEY IN QUESTION:

NAME:	Bajuk	Andrej	(LAST)	(FIRST)	(INITIAL)
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ADDRESS:	225 Broadway, Suite #100		(STREET)		
	N.Y.	N.Y.		10007	(ZIP CODE)
(CITY)	(COUNTY)	(STATE)			

TELEPHONE NUMBER:	212-803-5126
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CONTACT WITH OTHER AGENCIES:

Have you contacted any other agency, such as the Bar Association or District Attorney's Office concerning this matter? Yes

If so, state the name of the agency: The Assigned Counsel Plan, DOI

What action was taken by the agency: Pending

COURT ACTION TAKEN BY YOU AGAINST THE ATTORNEY:

Have you taken any civil or criminal action against the attorney? Yes Submitted a 42 USC 1983

If so, please name the court and provide the index number: Pending

What action was taken by the Court? Pending

FACTS: Start from the beginning and be sure to tell why you went to the attorney, when you had contact with the attorney, what happened each time you contacted the attorney and what it was that the attorney did wrong. Please send this office COPIES of all papers that you received from the attorney along with this form. PLEASE DO NOT USE STAPLES.

